

THE BOARD OF COMMISSIONERS

22nd March 2021

CPA/INS20/08

Ms Vithiya Marimutthu
Pointe Larue

Dear Ms Vithiya Marimutthu,

RE: Fair Trading Commission Vs Vithiya Marimutthu (trading as EVN Shopping Centre) – CPA/INS20/08

In accordance with Section 42(1) of the Fair-Trading Commission Act 2009, please find attached a signed copy of the ruling of the Board of Commissioners of the hearing conducted in the above-mentioned case. We trust in your expedient compliance as per the orders contained herein.

Also note that failure or refusal to comply with this ruling constitutes an offence under Section 53(1) of the Fair-Trading Act 2009. The same is reproduced below:

53 (1) A person which refuses or fails to comply with a direction or order of the commission commits an offence and is liable-

- a) Where the person is an individual, to a fine not exceeding SCR 100,000 rupees or to imprisonment for a term not exceeding 2 years or to both
- b) Where the person is a person other than the individual to a fine not exceeding SCR 400,000 rupees

Moreover, you have the right to appeal against this decision. To that effect you may, **within Fourteen (14) days of this receipt of this document**, submit a Notice of Appeal setting out your grounds of appeal to:

Chairperson for the Appeal Tribunal



Room 301 – 306
Block B
Unity House
Victoria
Mahe
Seychelles



Tel (+248) 4- 32 52 50)
PO Box 1207
Victoria
Mahe
Seychelles

THE BOARD OF COMMISSIONERS

P O Box 216,
Allied Building
Francis Rachel Street,
Mahe, Seychelles
Telephone: (248)4224881 /
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Yours Sincerely,

Ms. Chrystal Loizeau
Assistant Registration Officer

For: Chair Person
Board of Commissioners
Fair Trading Commission



THE FAIR TRADING COMMISSION
BEFORE THE BOARD OF COMMISSIONERS
(Consumer Protection Act, 2010)

IN THE MATTER OF:

THE FAIR TRADING COMMISSION

V

VITHIYA MARIMUTTHU
(Trading as EVN Shopping Centre)

Case No: CPA/INS20/08

Complainant – Fair Trading Commission

Respondent – Vithiya Marimutthu

QUORUM:

Mr Victor Pool – Commissioner

Mrs Jenna Thelermont-Commissioner

Mr Michael Nalletamby – Commissioner

For the Complainant

Ms Sophie Vel – Legal Officer (FTC)

For the Respondent

Vithiya Marimutthu – Shop Owner

RULING

[1] The Fair-Trading Commission (the Commission), pursuant to Section 33(1)(j) of the Fair-Trading Commission Act, 2009 which empowers the Commission to inspect goods, conducted a routine inspection on the 23rd January 2020, at the business premises of Ms. Vithiya Marimutthu, trading as EVN Shopping Centre located at Pointe Larue, (the respondent), a business and a supplier of goods as defined by Section 2(1) of the Consumer Protection Act, 2010. The respondent holds a retailer's license number 256835 under the business name EVN Shopping Centre registered on the 08th April 2015.

[2] During the inspection, officers Mr. Luigi Adrienne and Mr. Curtis Naiken of the Commission observed several breaches of the Consumer Protection Act, 2010, being;

- 1 type of good (10 item) worth SCR 380, was being sold with no plain languages/understandable languages contrary to Section 19 (1)(b) read with Section 19 (2) (a);
- 132 types of goods (1,846 items) worth SCR 31,726 were found to be on display and being sold without a price displayed on them contrary to Section 20 of the Act;
- 3 types of goods (27 items) worth SCR 374 were found to be expired contrary to Section 24 (1) of the Act;
- furthermore, the record of transaction that was being provided to customers did not include the unit price of the goods supplied and the total price of transaction before any applicable tax. The VAT certificate was on display which confirms that the business is indeed VAT registered, contrary to of Section 25 (1) of the Act;

[3] Subsequently, the Commission filed a case before the Board of Commissioners for the contravention of the Consumer Protection Act, 2010, namely: -

- Section 19(1)(b) read with Section 19(2)(a) which provides that “*Where a person is required in terms of this Act or any other written law to produce, provide or display a notice, document or other visual representation to a consumer, that person shall produce, provide or display such notice, document or visual representation in plain language, if no form has been prescribed.*” [19(2) For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of a class of persons to whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to (a) the context, comprehensiveness and consistency of the notice, document or visual representation.]
- Section 20(1) read with Section 20(3)(a) which provides that “*Subject to this subsection (2), a retailer shall not display any goods for sale without displaying to the consumer a price in relation to those goods.*” [20(3)(a) A price is adequately displayed to a consumer

if, in relation to any goods or services, a written indication of the price expressed in the currency of the Republic is annexed or affixed to, written, printed, stamped or located on, or otherwise applied to the goods or to, any band, ticket, covering, label, reel, shelf or other thing used in connection with the goods or on which the goods are mounted for display or exposed for sale.]

- Section 24(1) which provides that “A person shall not offer to supply, display or supply any particular goods at a date later than the expiry date of the goods.”
- Section 25(1) “A supplier of goods and services shall provide a written record of each transaction to the consumer to whom any goods or services are supplied.”

[4] This matter was called for a mention before the Board of Commissioners on the 13th October 2020. Ms. Sophie Vel, Legal Officer of the Fair-Trading Commission appeared on behalf of the Commission and Ms. Sharmila Marimutthu appeared on her sister’s behalf.

[5] The Board asked Ms Marimutthu whether she had an authorization letter from her sister, Ms Vithiya Marimutthu to appear on her behalf. The respondent informed to the Board that her sister had left urgently for medical reasons as she had been in and out of treatment here in Seychelles. Ms. Marimutthu did inform the Board that she would contact her sister to get an Authorization letter sent through so that she was able to represent on her behalf. The Boards secretary set another mention date for the 03rd November 2020. On the said date the respondent’s representative did not attend.

[6] On the 24th November 2020, the case was mentioned and the respondent failed to appear. Ms. Vel for FTC move the Board to enter a plea of judgement by consent as the respondent failed to appear for her defense. Furthermore, Ms. Vel also struck out Section 19 (1) (b) read with Section 19 (2) (a) of the CPA 2010.

[7] The Board took time to deliberate on the matter. The Board takes note that the respondent had not been present at the mentions, and therefore shall not engage in an in-depth analysis of the facts and law but does appreciate that the evidence on record does substantiate a *prima facie* case against the respondent and therefore finds the respondent, Ms. Vithiya Marimutthu, trading as EVN

Shopping Centre, to be in contravention of Section 20, Section 24 and Section 25 (1), of the Consumer Protection Act, 2010.

[8] The Board, in deciding on a suitable penalty, has considered the mitigating factors that Ms. Marimutthu did place before the Board when she did appear when the matter was first mentioned. The Board also takes notice that the volume of items found in contravention of the Consumer Protection Act, 2010 was high. Consequently, the Board shall impose a fine on the respondent in accordance with Section 67(1) of the Consumer Protection Act for the above contraventions as follows: -

- For the contravention of Section 20 the sum of SCR 500;
- For the contravention of Section 24 the sum of SCR 3,000;
- For the contravention of Section 25 (1) the sum of SCR 1,000;

All payments are to be made by the respondents at the office of the Fair-Trading Commission not later than Thirty (30) calendar days from the date of receipt of this ruling.

The parties are free to appeal against this ruling to the Appeal Tribunal (See Section 44 of the Fair-Trading Commission Act, 2009 and Section 77(1) of the Consumer Protection Act, 2010).

We rule accordingly.

Pronounced by us on this ^{22nd} day of March 2021.



Mr. Victor Pool
(Presiding Commissioner)



Mrs. Jenna Thelermont
(Commissioner)



Mr. Michael Nalletamby
(Commissioner)